



The Administrator

January 12, 2021

Elad L. Roisman
Acting Chairman
U.S. Securities and Exchange Commission
Washington, D.C. 20549

Dear Acting Chairman Roisman:

GSA is in receipt of Chairman Clayton's letter dated November 30, 2020 regarding the Request for Lease Proposals (RLP) issued by the U.S. General Services Administration (GSA) for the U.S. Securities and Exchange Commission's (SEC) headquarters space in which the SEC outlined three possible paths forward. Before addressing the SEC's proposed options, however, it is important to first set forth a brief history of how we have arrived at the current impasse in which GSA is ready to execute a lease with the Apparent Successful Offeror (ASO) but is unable to do so because of the SEC's decision to withdraw its previously executed Occupancy Agreement (OA) and refusal to send a Reimbursable Work Authorization (RWA)¹ for the tenant build-out costs.

Brief History

Nearly ten years ago, the Comptroller General of the United States found that the SEC does not have the authority to obligate leases on a year-by-year basis.² Facing the expiration of their headquarters facility, the SEC approached GSA (the lead agency charged with fulfilling the space needs of federal agencies) for assistance in acquiring a new lease. From the very beginning, GSA provided the SEC with every opportunity to review the pertinent procurement-related documents. For instance, in early 2018, the SEC reviewed the RLP and a draft lease which included a requirement to provide a priced option at the end of the firm term and again at the end of the option term. At that time, the RLP indicated that each option would be evaluated as part of the net present value evaluation (valued at 50% of the offered price). Representatives from GSA and the SEC met to go through the pricing structure to ensure the SEC's full understanding of the evaluation methodology. Then, on July 10, 2018, the SEC approved the RLP which included the low price technically acceptable procurement approach and the fixed

¹ GSA understands that Congress authorized the SEC to use available funds for this purpose. Please let us know if our understanding is incorrect.

² *Securities and Exchange Commission--Recording of Obligation for Multiple-Year Contract*, B-322160 (Oct. 3, 2011) (internal citations omitted).

price, evaluated purchase option. GSA then publicly released the RLP on July 10, 2018, seeking 1.2 million square feet of space for a 15-year firm-term and a ten-year renewal option.

Almost immediately thereafter, GSA received an agency protest by the incumbent challenging various aspects of the assignable purchase options. After GSA denied the agency level protest, the protester went to the U.S. Government Accountability Office (GAO), and GAO held that the solicitation requirement for offerors to propose two fixed-price, assignable purchase options for leased properties exercisable after 15 or 25 years, respectively, was not unreasonable, unduly restrictive of competition, or impermissibly vague. When the protester next took its arguments to the U.S. Court of Federal Claims (COFC), the court denied the request for injunctive relief. In sum, both GAO and the COFC (the fora statutorily provided by Congress for contractors to protest against government contracting irregularities) decisively ruled in GSA's favor.³

With the above backdrop in mind, we now turn to the three options set forth in the SEC's letter for how the parties could proceed.

The Three Paths Forward Suggested by the SEC

Regarding Path One, as previously noted, at the very beginning of our relationship, GSA provided the SEC with every opportunity to review the transactional structure. At this point, **years** have passed and now (b) (5)

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To the contrary, as the real estate arm of the Federal Government, (b) (5)

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³ The second set of protests, filed by another offeror, in which GSA also convincingly prevailed, did not deal with the purchase option.

⁴ (b) (5)

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⁵ (b) (5)

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(b) (5)

⁶ See, e.g., *HIGH-RISK SERIES: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, GAO-19-157SP at 80-81 (Mar. 6, 2019) (noting that "GSA must follow through on its plans to purchase leased buildings and reduce costs").

Before moving to the next path, we must address the SEC's suggestion that (b) (5)

Moving on to Path Two, the SEC is (b) (5)

Additionally, know that GSA takes pride in our innovative spirit and our ability to continually drive cutting edge real-estate solutions for our customers and the American taxpayer.

Finally, concerning Path Three, the SEC's letter references (b) (5)

Conclusion

As noted in the SEC's letter, our respective agencies have indeed worked well together in the past and we certainly have every intention of doing so here and in the future. However, in the interest of full disclosure, I would be remiss if I did not point out that (b) (5)

GSA, and the American people, relies on the SEC to perform its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Now, GSA urges the SEC to rely on GSA for its real-estate space needs. (b) (5)

If you have any additional questions or concerns, please feel to contact my office at 202-969-7277 or Mr. Darren Blue at 202-365-7675.

Sincerely,

(b) (6)

Emily W. Murphy
Administrator

⁷ Letter from Chairman Jay Clayton to Administrator Emily Murphy at 2 (Nov. 30, 2020).